IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 155 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MANILAL SAVJIBHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioner

MR YF MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 07/01/97

ORAL JUDGEMENT : (Per Pandya, J.)

1. The accused-appellant along with other six accused was facing charge of unlawful assembly, murder, grievous hurt, simple hurt, etc. in Sessions Case No.111 of 1987, conducted before the learned Additional Sessions Judge, Mehsana. The learned Trial Judge, by his judgment

dated 10.3.1989, was pleased to acquit accused Nos.1 and 3 to 7 for all offences. He did not believe the theory of unlawful assembly at all. However, he held accused No.2-Prajapati Manilal Savji guilty of offence under Section 302 and awarded life imprisonment.

2. Initially, Shri Shethna argued the matter on merits and attempted to make out a case of acquittal for the accused-appellant. The discussion that ensued indicated clearly that it is not possible to accept this submission.

3. In the alternative, therefore, Shri Shethna submitted that, in the background of the case, it cannot be said that death of anyone was ever intended by any of the accused more so when the weapon said to have been used by the accused-appellant a Dharia is made use of in a manner which would indicate that death was not intended.

4. The incident happened at about 7 P.M. on 22.3.1987 in the house of Mangalbhai Kalidas where all the accused came in a group armed with weapons like hockey, stick, Dharia, Persi, etc. They attacked the deceased and other persons in the house, in which the complainant also received injury and the deceased unfortunately received fatal injury on his head.

5. The complainant-Rameshbhai has been examined at Ex.28, P.W.1, page 89 of the paper book. He maintains that the present accused-appellant had given a Dharia blow on the head of the deceased. Further, it is none other than the widow of the deceased who comes out with a case in her examination in chief that the reverse portion or the blunt portion of Dharia was used. It is Dahiben, P.W.10, Ex.60, at page 151 of the paper book. This averment is to be found in the later part of paragraph 1 of the examination in chief.

6. The background of the quarrel which was preceded by previous night's incident was loan transaction, which was denied to the accused side by the complainant side. It is the case of the defence that the complainant side were in dominant position in a co-operative society and were not allowing the accused side to take loan. This had enraged the accused side and, therefore, verbal altercation took place on previous night, in the course, according to the defence, persons from their side received injuries. If this be the position, naturally by way of retaliation, next day's incident had happened.

7. Even then, in the background of the fact that, though as many as seven accused are tried, six of them have been acquitted as the idea of unlawful assembly was not acceptable to the learned Trial Judge and when reversed portion of Dharia is used, it is obvious that murder was not the intention. Nonetheless, death has been caused as a result of the injury inflicted by the use of that weapon in the manner as stated above. This certainly brings the case against the appellant-accused under Section 304, Part II, I.P.C. Ever since his arrest consequent upon the incident dated 22.3.1987, the accused has been in jail and by now has undergone 10 years of imprisonment. He is falling short by a little less than three months. We, therefore, hold that the period that he has undergone is enough. He may be set at liberty, if not required for any other purpose.

8. The appeal is, therefore, partly allowed. The accused-appellant stands convicted for offence under Section 304 Part II instead of offence under Section 302, I.P.C. The sentence that he has undergone so far is considered enough. He is, therefore, ordered to be set at liberty forthwith, if not required for any other purpose.

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